

### **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed September 11, 2009. The Examiner is thanked for the thorough examination of the present application. Upon entry of this response, claims 1-15 are pending in the present application. Applicants respectfully request consideration of the following remarks contained herein. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

#### **I. Allowable Subject Matter**

Applicants thank the Examiner for the indication of allowable subject matter in claims 10-15. (Office Action, page 11). As set forth in the claim amendments section, Applicants have addressed the objections to the base claim and have incorporated the subject matter of claim 10 and intervening claim 9 into claim 1, thereby rendering the rejection of this claim moot.

#### **II. Objections to the Drawings**

The drawings are objected to under 37 CFR 1.83(a). Applicants assert that the figures do not add new matter as they merely illustrate flow diagrams of the steps described in at least paragraphs [0061]-[0074] of the originally filed specification and in original claims 1-9. Applicants respectfully request that the objection be withdrawn.

#### **III. Objections to the Specification**

On page 4, the Office Action asserts that the title of the invention is not descriptive and suggests incorporating the term "LDL" into the title. Applicants note that the current title ("Enhanced smart DSL systems for LDL") already recites this term. Should the Examiner maintain the rejection, Applicants respectfully request further

clarification. Regarding the other noted informalities, Applicants have amended the specification and respectfully request that the objection to the specification be withdrawn.

#### **IV. Claim Objections**

In response to the objection to claim 1 noted on page 5 of the Office Action, Applicants have amended claim 1 and respectfully request that the objection be withdrawn.

#### **V. Response to Claim Rejections Under 35 U.S.C. § 101**

As set forth above, claim 1 has been amended such that the claimed elements are positively tied to another statutory category that accomplishes the claimed process. Namely, claim 1 now recites "selecting a spectral mask by one of a central office and customer premise equipment (CPE) based upon performance criteria." Accordingly, withdrawal of the §101 rejection is respectfully requested.

#### **VI. Response to Claim Rejections Under 35 U.S.C. § 102**

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102. Claims 1-3 and 5-9 stand rejected under 35 U.S.C. §102 as allegedly being anticipated by *Darveau et al.* (U.S. Patent No. 6,760,383 hereinafter "*Darveau*").

As discussed above and based on the indication of allowable subject matter, Applicants have amended claim 1 to incorporate the allowable features in claim 10 and

intervening claim 9. Claims 9 and 10 have been canceled. As such, Applicants submit that all remaining claims are in condition for allowance.

**VII. New Claim 16**


Applicants respectfully submit that new claim 16 is allowable and that no new matter has been added. Favorable consideration and allowance of the newly added claim are respectfully requested.

**CONCLUSION**

Applicants respectfully submit that all pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this amendment and response to Office Action. If, however, any fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 20-0778.

Respectfully submitted,



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